

ORIGINAL

FILED

September 16 2009

Ed Smith
CLERK OF THE SUPREME COURT
STATE OF MONTANA

IN THE SUPREME COURT OF THE STATE OF MONTANA
NO. DA 09-0322

PLAINS GRAINS LIMITED PARTNERSHIP, a Montana limited
partnership; et al.,

Plaintiffs and Appellants,

v.

BOARD OF COUNTY COMMISSIONERS OF CASCADE
COUNTY, the governing body of the County of Cascade, acting by and
through Peggy S. Beltrone, Lance Olson and Joe Briggs,

Defendants and Appellees,

and

SOUTHERN MONTANA ELECTRIC GENERATION and
TRANSMISSION COOPERATIVE, INC.; the ESTATE OF DUANE
L. URQUHART; MARY URQUHART; SCOTT URQUHART; and
LINDA URQUHART,

Intervenors and Appellees/Cross-Appellants.

FILED

SEP 16 2009

Ed Smith
CLERK OF THE SUPREME COURT
STATE OF MONTANA

MOTION TO FILE OVER-LENGTH BRIEF

APPEARANCES:

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*Attorneys for Intervenor and
Appellees/Cross-Appellants SME/Urquharts*


COME NOW Plaintiffs/Appellants (Plains Grains) and pursuant to the provisions of Rule 12(10), M.R.App.Civ.P., move the Court for leave to file an over-length combined response and reply brief, which is due to be filed on or before September 29, 2009. Rule 11(4)(a), M.R.App.Civ.P., provides that a reply, which also answers a cross-appellant's principal brief, is limited to 5,000 words. In its brief, Plains Grains must now address the lengthy arguments advanced by Intervenor/Cross-Appellant Southern Montana Electric Generation and Transmission Cooperative, Inc. (SME) in support of its cross-appeal, as well as reply to the arguments of both SME and the Defendant/Appellee Board of County Commissioners of Cascade County in regards to the merits of Plains Grains' appeal. Thus, there are at least four major issues on which Plains Grains must reply, which cover a broad spectrum of law, including mootness, land use, and public participation. Moreover, by Order of this Court dated August 31, 2009, Plains Grains must also file on September 29, 2009 their response to the motion to dismiss filed by SME on the grounds of mootness. This is the same issue which SME raises in its cross-appeal. Plains Grains proposes

to file one consolidated response and reply brief addressing the issues on appeal and cross-appeal, including the issue of mootness raised in both SME's appeal and motion to dismiss. Plains Grains requests leave to file this combined brief which shall not exceed 10,000 words. Plains Grains respectfully submits that the requested over-length brief is in the interest of judicial economy, and will provide Plains Grains with a reasonable opportunity to address all of the issues raised in the appeal, cross-appeal, and motion to dismiss, in a manner which will enable Plains Grains to fully apprise the Court of applicable authorities.

An affidavit of counsel and a proposed order is submitted herewith.

Counsel for the County (Alan McCormick) has been contacted and does not oppose this motion. Counsel for SME (Gary Zadick) has been contacted and opposes this motion.

Respectfully submitted this 15th day of September, 2009.



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Great Falls MT 59403

Attorneys for Plaintiffs/Appellants

CERTIFICATE OF SERVICE

I hereby certify that on this 15th day of September, 2009, a true and correct copy of the foregoing document has been served via U.S. First Class Mail upon the following:

Alan F. McCormick
Garlington, Lohn & Robinson, PLLP
199 West Pine
P O Box 7909
Missoula MT 59807-7909

Brian Hopkins
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121 - 4th Street North
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Linda M. Ranes

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AFFIDAVIT IN SUPPORT OF MOTION TO FILE OVER-LENGTH BRIEF

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*Attorneys for Intervenors and
Appellees/Cross-Appellants SME/Urquharts*

STATE OF MONTANA)
County of Flathead) ss.

Roger M. Sullivan, being first duly sworn, deposes and states:

1. I am one of the attorneys for Plaintiffs/Appellants (Plains Grains) in this action.
2. Pursuant to the provisions of Rule 12(10), M.R.App.Civ.P., on behalf of Plains Grains I have filed a motion for filing an over-length brief. This affidavit is submitted in support of that motion.
3. In its brief, Plains Grains must now address the arguments advanced by Intervenor/Cross-Appellant Southern Montana Electric Generation and Transmission Cooperative, Inc. (SME), as well as reply to the arguments of both SME and the Defendant/Appellee Board of County Commissioners of Cascade County in regards to the merits of Plains Grains' appeal. Thus, there are at least four major issues which

Plains Grains must address, which cover a broad spectrum of law, including mootness, land use, and public participation.

4. By Order of this Court dated August 31, 2009, Plains Grains is to file on or before September 29, 2009, its response and reply brief addressing the issues on appeal and cross-appeal and their written response to the motion to dismiss filed by SME on the grounds of mootness, which is the same issue which SME raises in its cross-appeal.

5. Plains Grains proposes to file one consolidated response and reply brief addressing the issues on appeal and cross-appeal, including the issue of mootness raised in both SME's appeal and motion to dismiss, which brief would not exceed 10,000 words.

6. The undersigned respectfully submits that the requested over-length brief will provide Plains Grains with a reasonable opportunity to address all of the issues raised in the appeal, cross-appeal, and motion to dismiss, in a manner which will

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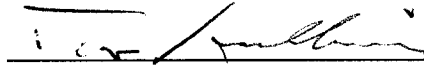
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enable Plains Grains to fully apprise the Court of applicable authorities on each of the issues before this Court.

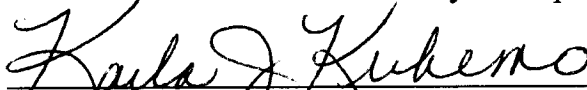
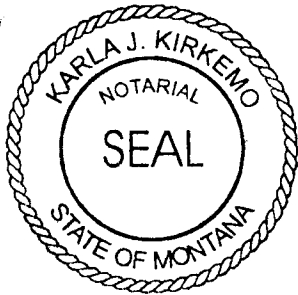
FURTHER AFFIANT SAYETH NOT.

Dated this 15th day of September, 2009.



Roger M. Sullivan
McGarvey, Heberling, Sullivan & McGarvey, PC
745 South Main
Kalispell MT 59901

SUBSCRIBED AND SWORN to before me this 15th day of September, 2009.



Notary Public for the State of Montana
Residing at Kalispell MT
My Commission Expires: 8/20/2011

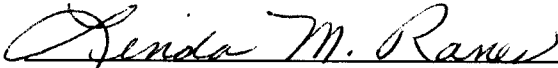
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